IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

LETTER PATENT APPEAL NO.129 OF 2005
IN
WRIT PETITION NO.4949 OF 2005

Suryakant Shankar Chavan ...Appellant
Vs.
Satish Namdeo Chavan & Ors. ...Respondents

Mr. M.L.Patil for Appellant
Mr. Vijay Patil for Respondent No.1
Nr. R.V. More for Respondent No.6.

CORAM: H.L.GOKHALE &
SMT.R.S.DALVI,JJ.
DATED: 10TH AUGUST, 2005

P.C.

1. Heard Mr. M.L. Patil for the Appellant. Mr. Vijay Patil appears for the Respondent No.1 and Mr. R.V.More appears for Respondent No.6.

2. This appeal seeks to challenge the order passed by a learned Single Judge on Writ Petition No.4949 of 2005 on 29th July, 2005. The operative part of that order is passed by consent. The learned Judge has specifically recorded in this impugned order as follows :-

> **. '' The following Order is passed by consent:-**
>
> **. It is clear that the earlier Order of this Court dated 20th July, 2005 in Writ**

Petition Nos.4731, 4732 and 4733 of 2005 is hereby recalled. Further the impugned Order dated 25th July, 2005 is hereby quashed and set aside. If the Petitioners in the earlier Petitions have any grievance regarding the election, they may avail of such remedy as may be available in the law.''

3. The controversy in this matter is regarding the election to the Gram Panchayat of Village Mahagaon, Taluka: Satara, District: Satara. The grievance of the Appellant was that the ward formation in the concerned village was not done correctly by the concerned Officer. Many of the people who are residing in a particular area were shown as voters in another area and another ward. As per the programme with respect to the formation of the wards, the objections were to be submitted by 6th July, 2005 and the Appellants herein didn't submit their objections. The wards were ultimately finalised on 15th July, 2005 and according to the Appellant not correct. The Appellant herein therefore, filed Writ Petition No.4731 of 2005. Prayer (a) of this Petition was two fold, namely to direct the Tahasildar, Taluka: Satara to consider the objections raised by the Appellant to Schedule (B) (that is the draft formation of the wards.) and secondly to the preliminary voters list. The Appellant sought a direction that the objection be considered and accordingly the wards be formed and

preliminary voters' list be corrected. The Respondent No.1 herein was not a party to that Petition. Only the Tahasildar was represented by the Assistant Government Pleader, even the State Election Commission was also not made party. The learned Judge was persuaded to pass order on that Petition on 20th July, 2005. It is seen that the only prayer which was pressed before him was that the Appellant herein had certain objections to the voters list, and those objections be considered. The learned Assistant Government Pleader made a statement that those objections will be considered before publishing the voters list. The Petition was disposed off accordingly.

4. The Respondent No.1 herein felt aggrieved by that decision and therefore, filed Writ Petition No.4949 of 2005 wherein he sought that this order be recalled. The Tahasildar had in the meanwhile proceeded to effect the procedure as sought by the Appellant and had issued a corrected list of wards and voters list on 25th July, 2005. The Respondent No.1 referred to this order of 25th July, 2005 in paragraph 7 of his Petition and pointed out that the order passed by the High Court had been misinterpreted and that the Officer had exceeded the jurisdiction and that the order of 25th July, 2005 was bad.

5. As we have noted earlier the Petition was

there after heard by the learned single Judge on 29th July, 2005. He noted in his impugned order that it was not brought to his notice that the election programme had already been announced. He specifically stated in paragraph 5 of his order passed on 29th July, 2005 that had this been disclosed to the Court, the Appellant would not have been entitled to the relief that was sought. It is therefore, that by consent the operative part of the impugned order was passed.

6. Mr. M.L. Patil, learned Counsel appearing for the Appellant submitted that the order passed by the learned single Judge on the first occasion on 20th July, 2005 was perfectly justified as also the order passed by the Tahasildar based thereon order dated 25th July, 2005. In his submission in the programme submitted by the Election Commission the finalisation of the wards was to take place by 15th July, 2005. Although the election programme was announced on 15th July, 2005 even as per that programme the voters list was to be made available on 20th July, 2005. He therefore, submitted that this gap between 15th July, 2005 and 20th July, 2005 was the period wherein the Appellant herein could approach the appropriate Court of law. It is during this period only when the first order was passed by the learned Judge on 20th July, 2005, and there was no reason for the learned Judge to recall the same.

7. Now as can be seen that the notification for the election was issued on 15th July, 2005. Mr.Vijay Patil learned Counsel appearing for Respondent No.1 has rightly pointed out that although the voters list was to be made available by 20th July, 2005 and the list was to be finalised as per the the programme by 25th July, 2005, in fact there is totally erroneous reference of Rule 3(4) and Rule 3(5) for that purpose. He drew our attention to Rule 3 of the Bombay Village Panchayat Election Rules, 1959. Rule 1 clearly states that it is the voters list or the electoral role for the State which is to be treated as authentic voters list for the village panchayat. Sub Rule 4 of Rule 3 only talks about the list to be kept open for public inspection. Sub Rule 5 does not provide for any finalisation of the list or notice therefor, implying seeking any objections thereto. Mr.Vijay Patil is quite right in pointing out that these stages in the election programme published by the commission it referred erroneously to the concerned Rules. In fact there is no provision for any such objection to the voters list in the relevant rule. As far as the formation of the wards is concerned that was undoubtedly finalised on 15th July, 2005. The Election programme was finalised on 15th July, 2005. Under the relevant rule there is a provision to file objections to the formation of the wards before the authority concerned. Those objections were filed by

the Appellant herein and it appears that they were not entertained by the Authority. There is no provision for any appeal against that decision. This being the position it can certainly be said on behalf of the Appellant that the only remedy available to him was to file a Writ Petition. But in any case such a remedy could not have been followed after election programme is announced on 15th July, 2005. The entire submission that any such objection can be raised to the formation of the ward based on erroneous references in the programme is unsustainable. That apart the order which is passed by the learned single Judge recalling the earlier order and setting aside the subsequent order of Tahasildar dated 25th July, 2005, is an order passed by consent as the learned single Judge recorded. This being the position the appeal cannot be entertained even on that ground.

8. For the reasons stated above we do not find any merit in the appeal on the submissions which are raised before us apart from the fact that since it is an appeal against the order by consent, it is otherwise also not maintainable. Appeal is dismissed.

(H.L.GOKHALE,J.)

(SMT.R.S.DALVI,J.)